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Phillips v. City of New York, 1:21-cv-08149

Zuckerman, Mark (Law) <mzuckerm@law.nyc.gov>

Wed, May 17, 2023 at 4:40 PM

To: remy green <remy@femmelaw.com>

Cc: Protester Cases <Protests@femmelaw.com>, Maryanne Kaishian <mkaishian@gmail.com>

Please send me your draft joint letter. Thanks.

From: remy green <remy@femmelaw.com>**Sent:** Wednesday, May 17, 2023 4:39 PM**To:** Zuckerman, Mark (Law) <mzuckerm@law.nyc.gov>**Cc:** Protester Cases <Protests@femmelaw.com>; Maryanne Kaishian <mkaishian@gmail.com>**Subject:** [EXTERNAL] Phillips v. City of New York, 1:21-cv-08149

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Hi Mark,

Thank you for the call. To follow up on next steps, we will be sending you our position for a joint letter tonight, and need your position by COB Friday so we can finalize and respond to anything you include. Please let us know if that's a problem.

On the substance, to commemorate, Judge Cave asked us to meet on four issues:

(i) a potential tolling agreement with respect to additional Defendants

Plaintiffs seek to name in this action;

(ii) the discovery Plaintiffs intend to seek to identify additional individuals

currently named as Doe or Roe Defendants;

(iii) whether Defendants will consent, without prejudice to the arguments raised in their pending motion to dismiss (ECF No. 62), to Plaintiffs filing a third amended complaint naming additional Defendants in light of the information Defendants have provided (the "TAC"); and

(iv) if a TAC were filed, a briefing schedule for Defendants' renewed motion to dismiss.

On (i), Defendants categorically oppose a tolling agreement "at this time" (your phrase), although you would not explain what "at this time" meant. You also indicated Defendants would oppose a motion to toll based on (1) the fact that the Law Department does not represent the Doe/Roe Defendants and (2) a purported lack of diligence.

On (ii), we explained we need lists of the folks identified in your letter, as well as photographs, to try to identify them. Defendants stated they opposed that, and believed it was "abusive." We asked to clarify. You refused to state clearly whether you categorically opposed *any* discovery, despite me asking the question many times and several ways. Instead you either stayed silent or simply said "you have our position," while refusing to clarify.

On (iii), Defendants will not consent to anything.

On (iv), Defendants asked for 45 days after the grant of a motion to amend, which we have no problem with -- beyond pointing out that we would hope you would extend similar courtesies in the future, which you said you would do and always did (*but see contra*, Dkt. No. 71 (opposing anything near 45 days to oppose)).

Again, I would invite you to let us know at any point (1) if there is any discovery Defendants *would* consent to; (2) correct me if I am wrong that

Defendants categorically oppose any discovery and any tolling agreement; and (3) correct me if I'm wrong that, as to the Does identified, Defendants oppose categorically anything that names them or tolls the statute of limitations to provide time to name them.

Otherwise, notwithstanding the Court's indication that limited Doe discovery, especially if we're talking about a small number of people (which we are) is appropriate, I understand you oppose anything categorically. Likewise, for the Does who have been named, I understand you oppose naming them categorically.

Yours,

Remy.

J. Remy Green

Partner

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